

Remarks/Arguments

Reconsideration of this application is requested.

Claim Status

Claims 1, 2, 5-7 and 10 are pending. Claims 1 and 6 are amended.

Claim Rejections – 35 USC 112

Claims 1, 2 and 5 are rejected under 35 USC 112, first paragraph and second paragraphs. In particular, the Action asserts that claim 1 covers every conceivable structure for achieving the stated function, and that it is unclear whether an apparatus or method is being claimed.

In response, claim 1 is amended to recite an apparatus comprising an acquiring unit, an extracting unit, a peak determination unit and a process unit. Thus, claim 1 now recites specific structures and clearly claims an apparatus, and is in clear compliance with the first and second paragraphs of 35 USC 112.

Claim Rejections – 35 USC 102

Claims 1, 2, 5-7 and 10 are rejected under 35 USC 102(b) as anticipated by Tamura (US 6,040,860). In response, applicant traverses the rejections and amends independent claims 1 and 6 to clarify the subject matter of the present invention relative to Tamura.

The Action asserts that because a histogram spectrum is separated into three luminance regions and the apparatus is meant to evaluate the amount of backlighting in a typical image input signal, the middle luminance region (FIG. 5a) is related to the average luminance. Applicant assumes that the Action interprets the recitation in independent claims 1 and 6 of “at least one of said first and second thresholds is set based on an average level of said physical quantity” as encompassing the structure of Tamara in which at least one of the first and second thresholds is set based on an average level of the amount of backlighting in a typical image.

In view thereof, claims 1 and 6 are amended to recite:

...at least one of said first and second thresholds is set based on an average level of said physical quantity of said image data.

This subject matter is clearly not disclosed by Tamura. In Tamura, an extracting process of a peak in the luminance histogram and a determination process of compensation rate in extracting the peak can be considered to be performed, respectively, by feature quantity extraction circuit 107 and image evaluation means 108. To determine the threshold for peak extraction based on the average physical quantity, a processing result of the image average luminance obtained by full-screen averaging circuit 105a or the average luminance of image in the middle of the image obtained by center-weighted averaging circuit 105b must be input into either feature quantity extraction circuit 107 or image evaluation means 108.

However, the image average luminance obtained by full-screen averaging circuit 105a and the average luminance of image in the middle of the image obtained by center-weighted averaging circuit 105b are used only for AGC processing at the input side. Tamara does not disclose a structure for inputting the processing result of the average luminance of the processing image or the average luminance of the processing image in the middle of the image into either feature quantity extraction circuit 107 or image evaluation means 108.

Thus, Tamura does not disclose setting the process threshold for feature quantity extraction circuit 107 or image evaluation means 108 based on the average luminance of the processing image or the average luminance of the processing image in the middle of the image. Therefore, Tamura does not setting at least one of first and second thresholds “based on an average level of said physical quantity of said image data”, as is required by claims 1 and 6, as amended.

Since Tamura does not disclose each and every feature of claims 1 and 6, it cannot anticipate claims 1 and 6 or claims 2, 5, 7 and 10 dependent thereon. The

rejections of claims 1, 2, 5-7 and 10 under 35 USC 102(b) should accordingly be withdrawn.

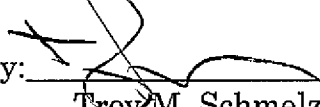
Conclusion

The foregoing amendments comply with requirements of form and thus should be admitted under 37 CFR 1.116(b). Alternatively, if these amendments are deemed to touch the merits, admission is requested under 37 CFR 1.116(c). In this connection, these amendments were not earlier presented because they are in response to the matters pointed out for the first time in the final Office Action. Lastly, admission is requested under 37 CFR 1.116(b) as presenting rejected claims in better form for consideration on appeal.

This application is believed to be in condition for allowance. The Examiner is invited to contact the undersigned to resolve any issues that remain after consideration and entry of this amendment. Any fees due with this response may be charged to our Deposit Account No. 50-1314.

Respectfully submitted,
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Date: January 28, 2008

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